

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 393

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; AUTHORIZING
SUPPLEMENTAL SEVERANCE TAX BONDS FOR PUBLIC SCHOOL CAPITAL
OUTLAY PROJECTS; AMENDING THE PUBLIC SCHOOL CAPITAL
IMPROVEMENTS ACT TO ESTABLISH FUNDING PRIORITIES, EXPAND THE
PURPOSE FOR WHICH FUNDS MAY BE USED, INCREASE THE STATE
DISTRIBUTION AND ADJUST STATE DISTRIBUTIONS BY AN INFLATION
FACTOR; AMENDING THE PUBLIC SCHOOL CAPITAL OUTLAY ACT TO CHANGE
THE MEMBERSHIP OF THE PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL,
CHANGE CRITERIA FOR FUNDING CERTAIN PROJECTS, PROVIDE A
PROCEDURE FOR APPEALING CERTAIN DECISIONS, PROVIDE A CAUSE OF
ACTION AGAINST CERTAIN SCHOOL DISTRICTS FOR CERTAIN
CONSTITUTIONAL VIOLATIONS AND PROVIDE FOR A TAX IMPOSITION AS A
REMEDY; CREATING THE PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE;
PROVIDING DUTIES FOR THE TASK FORCE; AMENDING THE TECHNOLOGY
FOR EDUCATION ACT TO LIMIT CARRYFORWARD PROVISIONS; MAKING

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1 APPROPRIATIONS.

2
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

4 Section 1. Section 7-27-12.2 NMSA 1978 (being Laws 2001,
5 Chapter 338, Section 2) is amended to read:

6 "7-27-12.2. SUPPLEMENTAL SEVERANCE TAX BONDS--PUBLIC
7 SCHOOL CAPITAL OUTLAY PROJECTS.--

8 A. The public school capital outlay council is
9 authorized to certify by resolution that proceeds of
10 supplemental severance tax bonds are needed for expenditures
11 relating to public school capital outlay projects pursuant to
12 [Section 22-24-5 NMSA 1978] the Public School Capital Outlay
13 Act or for the state distribution for public school capital
14 improvements pursuant to the Public School Capital Improvements
15 Act. The resolution shall specify the total amount needed.

16 B. The state board of finance may issue and sell
17 supplemental severance tax bonds in compliance with the
18 Severance Tax Bonding Act when the public school capital outlay
19 council certifies by resolution the need for the issuance of
20 the bonds. The amount of the bonds sold at each sale shall not
21 exceed the lesser of the amount certified by the council or the
22 amount that may be issued pursuant to the restrictions of
23 Section 7-27-14 NMSA 1978.

24 C. The state board of finance shall schedule the
25 issuance and sale of the bonds in the most expeditious and

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1 economical manner possible.

2 D. The proceeds from the sale of the bonds are
3 appropriated as follows:

4 (1) the amount certified by the
5 ~~[superintendent of public instruction]~~ secretary of public
6 education as necessary to make the distribution pursuant to
7 Section 22-25-9 NMSA 1978 is appropriated to the public school
8 capital improvements fund for the purpose of carrying out the
9 provisions of the Public School Capital Improvements Act; and

10 (2) the remainder of the proceeds is
11 appropriated to the public school capital outlay fund for the
12 purpose of ~~[making awards of grant assistance pursuant to~~
13 ~~Section 22-24-5 NMSA 1978, except that, of the proceeds~~
14 ~~received from the sale of the bonds in fiscal year 2001, fifty~~
15 ~~million dollars (\$50,000,000) shall be used for projects to~~
16 ~~correct outstanding deficiencies pursuant to Sections 22-24-4.1~~
17 ~~and 22-24-4.2 NMSA 1978]~~ carrying out the provisions of the
18 Public School Capital Outlay Act. "

19 Section 2. Section 7-27-14 NMSA 1978 (being Laws 1961,
20 Chapter 5, Section 11, as amended) is amended to read:

21 "7-27-14. AMOUNT OF TAX--SECURITY FOR BONDS. --

22 A. The legislature shall provide for the continued
23 assessment, levy, collection and deposit into the severance tax
24 bonding fund of the tax or taxes upon natural resource products
25 severed and saved from the soil of the state that, together

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1 with such other income as may be deposited to the fund, will be
2 sufficient to produce an amount that is at least the amount
3 necessary to meet annual debt service charges on all
4 outstanding severance tax bonds and supplemental severance tax
5 bonds.

6 B. Except as otherwise specifically provided by
7 law, the state board of finance shall issue no severance tax
8 bonds unless the aggregate amount of severance tax bonds
9 outstanding, and including the issue proposed, can be serviced
10 with not more than fifty percent of the annual deposits into
11 the severance tax bonding fund, as determined by the deposits
12 during the preceding fiscal year.

13 C. The state board of finance shall issue no
14 supplemental severance tax bonds with a term that extends
15 beyond the fiscal year in which the bonds are issued unless the
16 aggregate amount of severance tax bonds and supplemental
17 severance tax bonds outstanding, and including the issue
18 proposed, can be serviced with not more than sixty-two and
19 one-half percent of the annual deposits into the severance tax
20 bonding fund, as determined by the deposits during the
21 preceding fiscal year.

22 D. Except as otherwise specifically provided by
23 law, the state board of finance may issue supplemental
24 severance tax bonds with a term that does not extend beyond the
25 fiscal year in which they are issued if the debt service on

1 such supplemental severance tax bonds when added to the debt
 2 service previously paid or scheduled to be paid during that
 3 fiscal year on severance tax bonds and supplemental severance
 4 tax bonds does not exceed [~~eighty-seven and one-half~~] ninety-
 5 five percent of the deposits into the severance tax bonding
 6 fund during the preceding fiscal year.

7 E. The provisions of this section shall not be
 8 modified by the terms of any severance tax bonds or
 9 supplemental severance tax bonds hereafter issued. "

10 Section 3. Section 7-37-7 NMSA 1978 (being Laws 1973,
 11 Chapter 258, Section 40, as amended) is amended to read:

12 "7-37-7. TAX RATES AUTHORIZED--LIMITATIONS. --

13 A. The tax rates specified in Subsection B of this
 14 section are the maximum rates that may be set by the department
 15 of finance and administration for the use of the stated
 16 governmental units for the purposes stated in that subsection.
 17 The tax rates set for residential property for county, school
 18 district or municipal general purposes or for the purposes
 19 authorized in Paragraph (2) of Subsection C of this section
 20 shall be the same as the tax rates set for nonresidential
 21 property for those governmental units for those purposes unless
 22 different rates are required because of limitations imposed by
 23 Section 7-37-7.1 NMSA 1978. The department of finance and
 24 administration may set a rate at less than the maximum in any
 25 tax year. In addition to the rates authorized in Subsection B

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1 of this section, the department of finance and administration
2 shall also determine and set the necessary rates authorized in
3 Subsection C of this section. The tax rates authorized in
4 Paragraphs (1), [~~and~~] (3) and (4) of Subsection C of this
5 section shall be set at the same rate for both residential and
6 nonresidential property. Rates shall be set after the
7 governmental units' budget-making and approval process is
8 completed and shall be set in accordance with Section 7-38-33
9 NMSA 1978. Orders imposing the rates set for all units of
10 government shall be made by the boards of county commissioners
11 after rates are set and certified to the boards by the
12 department of finance and administration. The department of
13 finance and administration shall also certify the rates set for
14 nonresidential property in governmental units to the department
15 for use in collecting taxes imposed under the Oil and Gas Ad
16 Valorem Production Tax Act, the Oil and Gas Production
17 Equipment Ad Valorem Tax Act and the Copper Production Ad
18 Valorem Tax Act.

19 B. The following tax rates for the indicated
20 purposes are authorized:

21 (1) for the use of each county for general
22 purposes for the 1987 and subsequent property tax years, a rate
23 of eleven dollars eighty-five cents (\$11.85) for each one
24 thousand dollars (\$1,000) of net taxable value of both
25 residential and nonresidential property allocated to the

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1 county;

2 (2) for the use of each school district for
3 general operating purposes, a rate of fifty cents (\$.50) for
4 each one thousand dollars (\$1,000) of net taxable value of both
5 residential and nonresidential property allocated to the school
6 district; and

7 (3) for the use of each municipality for
8 general purposes for the 1987 and subsequent property tax
9 years, a rate of seven dollars sixty-five cents (\$7.65) for
10 each one thousand dollars (\$1,000) of net taxable value of both
11 residential and nonresidential property allocated to the
12 municipality.

13 C. In addition to the rates authorized in
14 Subsection B of this section, there are also authorized:

15 (1) those rates or impositions authorized
16 under provisions of law outside of the Property Tax Code that
17 are for the use of the governmental units indicated in those
18 provisions and are for the stated purpose of paying principal
19 and interest on a public general obligation debt incurred under
20 those provisions of law;

21 (2) those rates or impositions authorized
22 under provisions of law outside of the Property Tax Code that
23 are for the use of the governmental units indicated in those
24 provisions, are for the stated purposes authorized by those
25 provisions and have been approved by the voters of the

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1 governmental unit in the manner required by law; [~~and~~]

2 (3) those rates or impositions necessary for
3 the use of a governmental unit to pay a tort or workers'
4 compensation judgment for which a county, municipality or
5 school district is liable, subject to the limitations in
6 Subsection B of Section 41-4-25 NMSA 1978, but, except as
7 provided in Paragraph (4) of this subsection, no rate or
8 imposition shall be authorized to pay any judgment other than
9 one arising from a tort or workers' compensation claim; and

10 (4) those rates or impositions ordered by a
11 court pursuant to Section 22-24-5.5 NMSA 1978 and for the use
12 of a school district to pay a judgment pursuant to that
13 section.

14 D. The rates and impositions authorized under
15 Subsection C of this section shall be on the net taxable value
16 of both residential and nonresidential property allocated to
17 the unit of government specified in the provisions of the other
18 laws or the judgments. "

19 Section 4. Section 15-3B-2 NMSA 1978 (being Laws 1972,
20 Chapter 74, Section 2, as amended) is amended to read:

21 "15-3B-2. DEFINITIONS.--As used in the Property Control
22 Act:

23 A. "capital outlay project" means the acquisition,
24 improvement, alteration or reconstruction of assets of a long-
25 term character that are intended to continue to be held or

1 used, including land, buildings, machinery, furniture and
 2 equipment. A "capital outlay project" includes all proposed
 3 expenditures related to the entire undertaking;

4 B. "department" means the general services
 5 department;

6 C. "director" means the director of the division;

7 D. "division" means the property control division
 8 of the department;

9 E. "jurisdiction" means all state buildings and
 10 land except those under the control and management of the state
 11 armory board, the office of cultural affairs, the state fair
 12 commission, the department of game and fish, the [~~state highway~~
 13 ~~and transportation~~] department of transportation, the
 14 commissioner of public lands, the state parks division of the
 15 energy, minerals and natural resources department, the state
 16 institutions of higher learning, the New Mexico school for the
 17 deaf, the New Mexico school for the visually handicapped, the
 18 judicial branch, the legislative branch, [~~and~~] property
 19 acquired by the economic development department pursuant to the
 20 Statewide Economic Development Finance Act and property
 21 acquired by the public school facilities authority pursuant to
 22 the Public School Capital Outlay Act; and

23 F. "secretary" means the secretary of general
 24 services. "

25 Section 5. Section 22-15A-9 NMSA 1978 (being Laws 1994,

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1 Chapter 96, Section 9, as amended) is amended to read:

2 "22-15A-9. EDUCATIONAL TECHNOLOGY FUND-- DISTRIBUTION. --

3 A. Upon annual review and approval of a school
4 district's educational technology plan, the bureau shall
5 determine a separate distribution from the educational
6 technology fund for each school district.

7 B. On or before July 31 of each year, the bureau
8 shall distribute money in the educational technology fund
9 directly to each school district in an amount equal to ninety
10 percent of the school district's estimated adjusted entitlement
11 calculated pursuant to Subsection C of this section. A school
12 district's unadjusted entitlement is that portion of the total
13 amount of the annual appropriation that the projected
14 membership bears to the projected membership of the state.
15 Kindergarten membership shall be calculated on a one-half full-
16 time equivalent basis.

17 C. A school district's estimated adjusted
18 entitlement shall be calculated by the bureau using the
19 following procedure:

20 (1) a base allocation is calculated by
21 multiplying the total annual appropriation by seventy-five
22 thousandths [~~of one~~] percent;

23 (2) the estimated adjusted entitlement amount
24 for a school district whose unadjusted entitlement is at or
25 below the base allocation shall be equal to the base

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1 allocation. For a school district whose unadjusted entitlement
 2 is higher than the base allocation, the estimated adjusted
 3 entitlement shall be calculated pursuant to Paragraphs (3)
 4 through (13) of this subsection;

5 (3) the total projected membership in those
 6 school districts that will receive the base allocation pursuant
 7 to Paragraph (2) of this subsection is subtracted from the
 8 total projected state membership;

9 (4) the total of the estimated adjusted
 10 entitlement amounts that will be distributed to those school
 11 districts receiving the base allocation pursuant to Paragraph
 12 (2) of this subsection is subtracted from the total
 13 appropriation;

14 (5) the projected membership for the district
 15 is divided by the result calculated pursuant to Paragraph (3)
 16 of this subsection;

17 (6) the number calculated pursuant to
 18 Paragraph (5) of this subsection is multiplied by the value
 19 calculated pursuant to Paragraph (4) of this subsection;

20 (7) ~~[the total of all legislative~~
 21 ~~appropriations excluding reauthorizations of education~~
 22 ~~technology appropriations made to the subject school district~~
 23 ~~made after January 1, 2003 for educational technology]~~
 24 excluding appropriations made prior to January 1, 2003 and
 25 reauthorizations of previous educational technology

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1 appropriations, the total of educational technology
2 appropriations made in the immediately preceding three fiscal
3 years directly to, and not rejected by, the school district, is
4 calculated. No later than June 30 of each year, the
5 [~~legislative council service~~] department of finance and
6 administration shall certify to the bureau the amount of direct
7 appropriations made to each school district during the
8 preceding twelve months. An appropriation made in a fiscal
9 year shall be deemed to be accepted by a school district
10 unless, prior to July 15 of the fiscal year following the
11 appropriation, the district notifies the department of finance
12 and administration and the public education department that the
13 district is rejecting the appropriation;

14 (8) the applicable amount for the school
15 district calculated from Subparagraph (k), (m), (n) or (o) of
16 Paragraph (5) of Subsection [E] B of Section 22-24-5 NMSA 1978
17 is subtracted from one;

18 (9) the value calculated pursuant to Paragraph
19 (7) of this subsection for the school district is multiplied by
20 the amount calculated pursuant to Paragraph (8) of this
21 subsection for that school district;

22 (10) the total amount of reductions for the
23 school district made in [~~prior~~] the immediately two preceding
24 fiscal years pursuant to Paragraph (11) of this subsection is
25 subtracted from the amount calculated pursuant to Paragraph (9)

1 of this subsection for that school district;

2 (11) the amount calculated for the school
 3 district pursuant to Paragraph (10) of this subsection is
 4 subtracted from the amount calculated pursuant to Paragraph (6)
 5 of this subsection for that school district;

6 (12) if the amount calculated for the school
 7 district pursuant to Paragraph (11) of this subsection is equal
 8 to or less than the base allocation amount, the estimated
 9 adjusted entitlement amount for that school district is equal
 10 to the base allocation amount; and

11 (13) if the amount calculated for the school
 12 district pursuant to Paragraph (11) of this subsection is more
 13 than the base allocation amount, the estimated adjusted
 14 entitlement amount for that school district is equal to the
 15 amount calculated pursuant to that paragraph.

16 D. On or before January 30 of each year, the bureau
 17 shall recompute each adjusted entitlement using the final
 18 funded membership for that year and, without making any
 19 additional reductions, shall allocate the balance of the annual
 20 appropriation adjusting for any over- or under-projection of
 21 membership.

22 E. ~~Any~~ A school district receiving funding
 23 pursuant to the Technology for Education Act is responsible for
 24 the purchase, distribution, use and maintenance of educational
 25 technology.

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1 F. As used in this section, "membership" means the
2 total enrollment of qualified students, as defined in the
3 Public School Finance Act, on the current roll of class or
4 school on a specified day. The current roll is established by
5 the addition of original entries and reentries minus
6 withdrawals. Withdrawal of students, in addition to students
7 formally withdrawn from the public school, includes students
8 absent from the public school for as many as ten consecutive
9 school days. "

10 Section 6. Section 22-24-2 NMSA 1978 (being Laws 1975,
11 Chapter 235, Section 2, as amended) is amended to read:

12 "22-24-2. PURPOSE OF ACT.--The purpose of the Public
13 School Capital Outlay Act is to ~~[meet critical school district~~
14 ~~capital outlay needs which cannot be met by the school district~~
15 ~~after it has exhausted available sources]~~ ensure that, through
16 a standards-based process for all school districts, the
17 physical condition and capacity, educational suitability and
18 technology infrastructure of all public school facilities in
19 New Mexico meet an adequate level statewide and the design,
20 construction and maintenance of school sites and facilities
21 encourage, promote and maximize safe, functional and durable
22 learning environments in order for the state to meet its
23 educational responsibilities and for New Mexico's students to
24 have the opportunity to achieve success. "

25 Section 7. Section 22-24-4 NMSA 1978 (being Laws 1975,

1 Chapter 235, Section 4, as amended) is amended to read:

2 "22-24-4. FUND CREATED--USE. --

3 A. There is created the "public school capital
4 outlay fund". Balances remaining in the fund at the end of
5 each fiscal year shall not revert.

6 B. Except as provided in Subsections G [~~and H~~]
7 through K of this section, money in the fund may be used only
8 for capital expenditures deemed by the council necessary for an
9 adequate educational program

10 C. The council may authorize the purchase by the
11 [~~property control division of the general services department~~]
12 public school facilities authority of [~~property~~] portable
13 classrooms to be loaned to school districts to meet a temporary
14 requirement. Payment for these purchases shall be made from
15 the fund. Title and custody to the [~~property~~] portable
16 classrooms shall rest in the [~~property control division~~] public
17 school facilities authority. The council shall authorize the
18 lending of the [~~property~~] portable classrooms to school
19 districts upon request and upon finding that sufficient need
20 exists. Application for use or return of state-owned portable
21 classroom buildings shall be submitted by school districts to
22 the council. Expenses of maintenance of the [~~property~~]
23 portable classrooms while in the custody of the [~~property~~]
24 control division] public school facilities authority shall be
25 paid from the fund; expenses of maintenance and insurance of

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1 the [~~property~~] portable classrooms while in the custody of a
2 school district shall be the responsibility of the school
3 district. The council may authorize the permanent disposition
4 of the [~~property~~] portable classrooms by the [~~property control~~
5 ~~division~~] public school facilities authority with prior
6 approval of the state board of finance.

7 D. Applications for assistance from the fund shall
8 be made by school districts to the council in accordance with
9 requirements of the council. The council shall require as a
10 condition of application that a school district have a current
11 five-year facilities plan, which shall include a current
12 preventive maintenance plan to which the school adheres for
13 each public school in the school district.

14 E. The council shall review all requests for
15 assistance from the fund and shall allocate funds only for
16 those capital outlay projects that meet the criteria of the
17 Public School Capital Outlay Act.

18 F. Money in the fund shall be disbursed by warrant
19 of the department of finance and administration on vouchers
20 signed by the secretary of finance and administration following
21 certification by the council that an application has been
22 approved or an expenditure has been ordered by a court pursuant
23 to Section 22-24-5.5 NMSA 1978. At the discretion of the
24 council, money for a project shall be distributed as follows:

25 (1) up to ten percent of the portion of the

1 project cost funded with distributions from the fund or five
 2 percent of the total project cost, whichever is greater, may be
 3 paid to the school district before work commences with the
 4 balance of the grant award made on a cost-reimbursement basis;
 5 or

6 (2) the council may ~~make~~ authorize payments
 7 directly to the contractor.

8 G. ~~[An amount up to five percent of the average~~
 9 ~~annual grant assistance authorized from the fund during the~~
 10 ~~three previous fiscal years may annually be expended for~~
 11 ~~project management expenses.]~~ Balances in the fund may be
 12 annually appropriated for the core administrative functions of
 13 the public school facilities authority pursuant to the Public
 14 School Capital Outlay Act and, in addition, balances in the
 15 fund may be expended by the public school facilities authority,
 16 upon approval of the council, for project management expenses;
 17 provided that:

18 (1) the total annual expenditures from the
 19 fund pursuant to this subsection shall not exceed five percent
 20 of the average annual grant assistance authorized from the fund
 21 during the three previous fiscal years; and

22 (2) any unexpended or unencumbered balance
 23 remaining at the end of a fiscal year from the expenditures
 24 authorized in this subsection shall revert to the fund.

25 H. Up to one million two hundred fifty thousand

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1 dollars (\$1,250,000) of the balances of the fund may be
2 expended in fiscal years 2003 and 2004 by the council for the
3 purpose of updating and refining the statewide assessment study
4 required by Section 22-24-5 NMSA 1978 and for the training of
5 state and local officials on the use of the database and other
6 data-management-related issues identified by the council.

7 I. Of the appropriation made to the fund by
8 Subsection D of Section 15 of Chapter 338 of Laws 2001 for the
9 purpose of correcting outstanding deficiencies, one million one
10 hundred thousand dollars (\$1,100,000) is appropriated to the
11 council for expenditure in fiscal [~~year~~] years 2004 through
12 2007 for the core administrative functions of the deficiencies
13 corrections program. Any unexpended or unencumbered balance
14 remaining at the end of fiscal year [~~2004~~] 2007 shall revert to
15 the fund.

16 J. Up to seven hundred thousand dollars (\$700,000)
17 of the balances of the fund may be expended by the council in
18 fiscal year 2004 for the core administrative functions of the
19 public school facilities authority.

20 K. Up to four million dollars (\$4,000,000) from the
21 fund may be expended annually by the council in fiscal years
22 2005 through 2009 for grants to school districts for the
23 purpose of making lease payments for classroom facilities,
24 including facilities leased by charter schools. The grants
25 shall be made upon application by the school districts and

1 pursuant to rules adopted by the council and the following
2 criteria:

3 (1) the amount of a grant to a school district
4 shall not exceed:

5 (a) the actual annual lease payments
6 owed for leasing classroom space for schools, including charter
7 schools, in the district; or

8 (b) three hundred dollars (\$300)
9 multiplied by the number of MEM using the leased classroom
10 facilities; provided that, if the total grants awarded pursuant
11 to this paragraph would exceed the total annual amount
12 available, the rate specified in this subparagraph shall be
13 reduced proportionately;

14 (2) a grant received for the lease payments of
15 a charter school may be used by that charter school as a state
16 match necessary to obtain federal grants pursuant to the
17 federal No Child Left Behind Act of 2001;

18 (3) at the end of each fiscal year, any
19 unexpended or unencumbered balance of the appropriation shall
20 revert to the fund; and

21 (4) as used in this subsection, "MEM" means
22 the total full-time-equivalent enrollment using leased
23 classroom facilities in the final funded prior school year."

24 Section 8. Section 22-24-4.1 NMSA 1978 (being Laws 2001,
25 Chapter 338, Section 6, as amended) is amended to read:

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1 "22-24-4.1. OUTSTANDING DEFICIENCIES--ASSESSMENT--
2 CORRECTION.--

3 A. No later than September 1, 2001, the council
4 shall define and develop guidelines, consistent with the codes
5 adopted by the construction industries commission pursuant to
6 the Construction Industries Licensing Act, for school districts
7 to use to identify outstanding serious deficiencies in public
8 school buildings and grounds, including buildings and grounds
9 of charter schools, that may adversely affect the health or
10 safety of students and school personnel.

11 B. A school district shall use these guidelines to
12 complete a self-assessment of the outstanding health or safety
13 deficiencies within the school district and provide cost
14 projections to correct the outstanding deficiencies.

15 C. The council shall develop a methodology for
16 prioritizing projects that will correct the deficiencies.

17 D. After a public hearing and to the extent that
18 money is available in the fund for such purposes, the council
19 shall approve allocations from the fund on the established
20 priority basis and, working with the school district and
21 pursuant to the Procurement Code, enter into construction
22 contracts with contractors to correct the deficiencies.

23 E. In entering into construction contracts to
24 correct deficiencies pursuant to this section, the council
25 shall include such terms and conditions as necessary to ensure

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1 that the state money is expended in the most prudent manner
2 possible and consistent with the original purpose.

3 F. Any deficiency that may adversely affect the
4 health or safety of students or school personnel may be
5 corrected pursuant to this section, regardless of the local
6 effort or percentage of indebtedness of the school district.

7 G. It is the intent of the legislature that all
8 outstanding deficiencies in public schools and grounds that may
9 adversely affect the health or safety of students and school
10 personnel be identified and awards made pursuant to this
11 section no later than June 30, [2004] 2005, and that funds be
12 expended no later than June 30, [2006] 2007. "

13 Section 9. Section 22-24-5 NMSA 1978 (being Laws 1975,
14 Chapter 235, Section 5, as amended) is amended to read:

15 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
16 APPLICATION-- GRANT ASSISTANCE. --

17 ~~[A. For project allocation cycles occurring before~~
18 ~~September 1, 2003, the council shall approve an application for~~
19 ~~grant assistance from the fund for a public school capital~~
20 ~~outlay project not wholly funded pursuant to Section 22-24-4.1~~
21 ~~NMSA 1978, when the council determines that:~~

22 ~~(1) a need exists requiring action;~~

23 ~~(2) the residents of the school district have~~
24 ~~provided available resources to the school district to meet its~~
25 ~~capital outlay requirements;~~

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1 ~~(3) the school district has used its capital~~
2 ~~resources in a prudent manner;~~

3 ~~(4) the school district has provided insurance~~
4 ~~for buildings of the school district in accordance with the~~
5 ~~provisions of Section 13-5-3 NMSA 1978;~~

6 ~~(5) the school district:~~

7 ~~(a) is indebted at not less than~~
8 ~~sixty-five percent of the total general obligation debt~~
9 ~~authorized by law; or~~

10 ~~(b) within the last three years, was~~
11 ~~indebted at the level required in Subparagraph (a) of this~~
12 ~~paragraph and received a grant pursuant to this section for the~~
13 ~~initial stages of a project and currently has a critical need~~
14 ~~for an additional grant to complete the same project;~~

15 ~~(6) the application includes:~~

16 ~~(a) the capital needs of any charter~~
17 ~~schools located in the school district or the school district~~
18 ~~has shown that the capital needs of the charter schools are not~~
19 ~~as great as the capital needs requested in the application; and~~

20 ~~(b) the facilities needed in the school~~
21 ~~district to implement a full-day kindergarten program or that~~
22 ~~the school district has shown that the need for facilities to~~
23 ~~implement the program is not as great as the capital needs~~
24 ~~requested in the application; provided that the total amount of~~
25 ~~assistance grants made in a fiscal year for the purpose of~~

1 ~~implementing full-day kindergarten programs shall not exceed~~
2 ~~five million dollars (\$5,000,000); and~~

3 ~~(7) the school district has submitted a five-~~
4 ~~year facilities plan that includes:~~

5 ~~(a) enrollment projections;~~

6 ~~(b) a current preventive maintenance~~
7 ~~plan to which the school adheres for each public school in the~~
8 ~~district; and~~

9 ~~(c) projections for the facilities~~
10 ~~needed in order to maintain a full-day kindergarten program.~~

11 ~~B. The council shall consider all applications for~~
12 ~~assistance from the fund and, after a public hearing, shall~~
13 ~~either approve or deny the application. Applications for grant~~
14 ~~assistance shall only be accepted by the council after a school~~
15 ~~district has complied with the provisions of this section. The~~
16 ~~council shall list all applications in order of priority, and~~
17 ~~all allocations shall be made on a priority basis, except:~~

18 ~~(1) twenty million dollars (\$20,000,000) of~~
19 ~~the proceeds from supplemental severance tax bonds available~~
20 ~~for the funding cycle in each of fiscal years 2002 and 2003~~
21 ~~shall be set aside for allocation solely for projects in school~~
22 ~~districts that are eligible for funding from the fund and that~~
23 ~~receive grants from the federal government as assistance to~~
24 ~~areas affected by federal activity authorized in accordance~~
25 ~~with Title 20 of the United States Code, commonly known as "PL~~

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1 ~~874 funds" or "impact aid";~~

2 ~~(2) fifteen million dollars (\$15,000,000) of~~
3 ~~the money in the fund available for the funding cycle in fiscal~~
4 ~~year 2004 shall be set aside for allocation solely for projects~~
5 ~~in school districts that are eligible for funding and that:~~

6 ~~(a) are eligible for additional program~~
7 ~~units pursuant to Section 22-8-23.1 NMSA 1978;~~

8 ~~(b) are indebted at not less than ninety~~
9 ~~percent of the total general obligation debt authorized by law;~~
10 ~~and~~

11 ~~(c) have a net taxable value per MEM~~
12 ~~equal to less than fifty percent of the average statewide net~~
13 ~~taxable value per MEM; and~~

14 ~~(3) in the case of an emergency]~~

15 A. Applications for grant assistance, the approval
16 of applications, the prioritization of projects and grant
17 awards shall be conducted pursuant to the provisions of this
18 section; provided, however, that the order of priority in the
19 three years beginning July 1, 2004 shall first reflect those
20 projects that [have been previously funded] were partially
21 funded by the council in September 2003 but are not as yet
22 completed, excluding expansion of those projects and contingent
23 upon maintenance of the required local support. [C.—For
24 allocation cycles beginning after September 1, 2003, the
25 following provisions apply] In that transition period, such

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underscored material = new
[bracketed material] = delete

1 projects shall be funded regardless of any deviation from the
 2 statewide adequacy standards; provided, that the amount of the
 3 award received shall not exceed the amount necessary to meet
 4 the statewide adequacy standards, including projected
 5 enrollment growth.

6 B. Except as provided in Subsection A of this
 7 section and in Section 22-24-5.5 NMSA 1978, the following
 8 provisions govern grant assistance from the fund for a public
 9 school capital outlay project not wholly funded pursuant to
 10 Section 22-24-4.1 NMSA 1978:

11 (1) all school districts are eligible to apply
 12 for funding from the fund, regardless of percentage of
 13 indebtedness;

14 (2) priorities for funding shall be determined
 15 by using the statewide adequacy standards developed pursuant to
 16 Subsection [D] C of this section; provided that:

17 (a) the council shall apply the
 18 standards to charter schools to the same extent that they are
 19 applied to other public schools; and

20 (b) in an emergency in which the health
 21 or safety of students or school personnel is at immediate risk
 22 or in which there is a threat of significant property damage,
 23 the council may award grant assistance for a project using
 24 criteria other than the statewide adequacy standards;

25 (3) ~~[after consulting with the staff architect~~

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1 ~~of the property control division of the general services~~
2 ~~department]~~ the council shall establish criteria to be used in
3 public school capital outlay projects that receive grant
4 assistance pursuant to the Public School Capital Outlay Act.

5 In establishing the criteria, the council shall consider:

6 (a) the feasibility of using design,
7 build and finance arrangements for public school capital outlay
8 projects;

9 (b) the potential use of more durable
10 construction materials that may reduce long-term operating
11 costs; and

12 (c) any other financing or construction
13 concept that may maximize the dollar effect of the state grant
14 assistance;

15 (4) no more than ten percent of the combined
16 total of grants in a funding cycle shall be used for
17 retrofitting existing facilities for technology infrastructure;

18 (5) except as provided in Paragraph (6) or (8)
19 of this subsection, the state share of a project approved and
20 ranked by the council shall be funded within available
21 resources in accordance with the following procedure:

22 (a) the final prior year net taxable
23 value for a school district divided by the MEM for that school
24 district is calculated for each school district;

25 (b) the final prior year net taxable

1 value for the whole state divided by the MEM for the state is
2 calculated;

3 (c) excluding any school district for
4 which the result calculated pursuant to Subparagraph (a) of
5 this paragraph is more than twice the result calculated
6 pursuant to Subparagraph (b) of this paragraph, the results
7 calculated pursuant to Subparagraph (a) of this paragraph are
8 listed from highest to lowest;

9 (d) the lowest value listed pursuant to
10 Subparagraph (c) of this paragraph is subtracted from the
11 highest value listed pursuant to that subparagraph;

12 (e) the value calculated pursuant to
13 Subparagraph (a) of this paragraph for the subject school
14 district is subtracted from the highest value listed in
15 Subparagraph (c) of this paragraph;

16 (f) the result calculated pursuant to
17 Subparagraph (e) of this paragraph is divided by the result
18 calculated pursuant to Subparagraph (d) of this paragraph;

19 (g) the sum of the property tax mill
20 levies for the prior tax year imposed by each school district
21 on residential property pursuant to Chapter 22, Article 18 NMSA
22 1978, the Public School Capital Improvements Act, the Public
23 School Buildings Act, the Education Technology Equipment Act
24 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
25 is calculated for each school district;

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1 (h) the lowest value calculated pursuant
2 to Subparagraph (g) of this paragraph is subtracted from the
3 highest value calculated pursuant to that subparagraph;

4 (i) the lowest value calculated pursuant
5 to Subparagraph (g) of this paragraph is subtracted from the
6 value calculated pursuant to that subparagraph for the subject
7 school district;

8 (j) the value calculated pursuant to
9 Subparagraph (i) of this paragraph is divided by the value
10 calculated pursuant to Subparagraph (h) of this paragraph;

11 (k) if the value calculated for a
12 subject school district pursuant to Subparagraph (j) of this
13 paragraph is less than five-tenths, then, except as provided in
14 Subparagraph (n) or (o) of this paragraph, the value calculated
15 for that school district pursuant to Subparagraph (f) of this
16 paragraph equals the portion of the approved project to be
17 funded from the fund;

18 (l) if the value calculated for a
19 subject school district pursuant to Subparagraph (j) of this
20 paragraph is five-tenths or greater, then that value is
21 multiplied by five-hundredths;

22 (m) if the value calculated for a
23 subject school district pursuant to Subparagraph (j) of this
24 paragraph is five-tenths or greater, then the value calculated
25 pursuant to Subparagraph (l) of this paragraph is added to the

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1 value calculated pursuant to Subparagraph (f) of this
 2 paragraph. Except as provided in Subparagraph (n) or (o) of
 3 this paragraph, the sum equals the portion of the approved
 4 project to be funded from the fund;

5 (n) in those instances in which the
 6 calculation pursuant to Subparagraph (k) or (m) of this
 7 paragraph yields a value less than one-tenth, one-tenth shall
 8 be used as the portion of the approved project to be funded
 9 from the fund;

10 (o) in those instances in which the
 11 calculation pursuant to Subparagraph (k) or (m) of this
 12 paragraph yields a value greater than one, one shall be used as
 13 the portion of the approved project to be funded from the fund;

14 (p) except as reduced pursuant to
 15 Paragraph (6) of this subsection, the amount to be distributed
 16 from the fund for an approved project shall equal the value for
 17 the subject school district derived from Subparagraph (k), (m),
 18 (n) or (o) of this paragraph multiplied by the total project
 19 cost; and

20 (q) as used in this paragraph: 1) "MEM"
 21 means the total full-time equivalent enrollment of students
 22 attending public school in a school district in the final
 23 funded prior school year [with kindergarten being counted as
 24 five-tenths]; and 2) "total project cost" means the total
 25 amount necessary to complete the public school capital outlay

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1 project less any insurance reimbursement received by the school
2 district for the project;

3 (6) the amount calculated pursuant to
4 Subparagraph (p) of Paragraph (5) of this subsection shall be
5 reduced by the following procedure:

6 (a) the total of all legislative
7 appropriations made after January 1, 2003 directly to, and not
8 rejected by, the subject school district for non-operating
9 purposes, excluding educational technology and reauthorizations
10 of appropriations previously made to the subject school
11 district, is calculated; provided that an appropriation made in
12 a fiscal year shall be deemed to be accepted by a school
13 district unless, prior to July 15 of the fiscal year following
14 the appropriation, the district notifies the department of
15 finance and administration and the public education department
16 that the district is rejecting the appropriation;

17 (b) the applicable amount for the
18 subject school district calculated from Subparagraph (k), (m),
19 (n) or (o) of Paragraph (5) of this subsection is subtracted
20 from one;

21 (c) the value calculated pursuant to
22 Subparagraph (a) of this paragraph for the subject school
23 district is multiplied by the amount calculated pursuant to
24 Subparagraph (b) of this paragraph for that school district;

25 (d) the total amount of reductions for

1 the subject school district previously made pursuant to
 2 Subparagraph (e) of this paragraph for other approved public
 3 school capital outlay projects is subtracted from the amount
 4 calculated pursuant to Subparagraph (c) of this paragraph; and

5 (e) the amount calculated pursuant to
 6 Subparagraph (p) of Paragraph (5) of this subsection shall be
 7 reduced by the amount calculated pursuant to Subparagraph (d)
 8 of this paragraph;

9 (7) as used in Paragraphs (5) and (6) of this
 10 subsection, "subject school district" means the school district
 11 that has submitted the application for funding and in which the
 12 approved public school capital outlay project will be located;

13 (8) in those instances in which a school
 14 district has used all of its local resources, the council may
 15 fund up to the total amount of a project; and

16 (9) no application for grant assistance from
 17 the fund shall be approved unless the council determines that:

18 (a) the public school capital outlay
 19 project is needed and included in the school district's five-
 20 year facilities plan among its top priorities;

21 (b) the school district has used its
 22 capital resources in a prudent manner;

23 (c) the school district has provided
 24 insurance for buildings of the school district in accordance
 25 with the provisions of Section 13-5-3 NMSA 1978;

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underscoring material = new
 [bracketed material] = deleted

1 (d) the school district has submitted a
2 five-year facilities plan that includes: 1) enrollment
3 projections; 2) a current preventive maintenance plan that has
4 been approved by the council pursuant to Section 22-24-5.3 NMSA
5 1978 and that is followed by each public school in the
6 district; and 3) projections for the facilities needed in order
7 to maintain a full-day kindergarten program;

8 (e) the school district is willing and
9 able to pay any portion of the total cost of the public school
10 capital outlay project that, according to Paragraph (5), (6) or
11 (8) of this subsection, is not funded with grant assistance
12 from the fund;

13 (f) the application includes the capital
14 needs of any charter schools located in the school district or
15 the school district has shown that the facilities of the
16 charter schools in the district meet the statewide adequacy
17 standards; and

18 (g) the school district has agreed, in
19 writing, to comply with any reporting requirements or
20 conditions imposed by the council pursuant to Section 22-24-5.1
21 NMSA 1978.

22 ~~[D.]~~ C. After consulting with the public school
23 capital outlay task force and other experts, the council shall
24 ~~[develop and]~~ regularly review and update statewide adequacy
25 standards applicable to all school districts. The standards

1 shall establish the [~~minimum~~] acceptable level for the physical
 2 condition and capacity of buildings, the educational
 3 suitability of facilities and the need for technological
 4 infrastructure. Except as otherwise provided in the Public
 5 School Capital Outlay Act, the amount of outstanding deviation
 6 from the standards shall be used by the council [~~after~~
 7 ~~September 1, 2003~~] in evaluating and prioritizing public school
 8 capital outlay projects.

9 [E-] D. It is the intent of the legislature that
 10 grant assistance made pursuant to this section allow every
 11 school district to meet the standards developed pursuant to
 12 Subsection [~~D~~] C of this section; provided, however, that
 13 nothing in the Public School Capital Outlay Act or the
 14 development of standards pursuant to that act prohibits a
 15 school district from using local funds to exceed the statewide
 16 adequacy standards.

17 [F-] E. Upon request, the council shall work with,
 18 and provide assistance and information to, the public school
 19 capital outlay task force.

20 [G-] F. The council may establish committees or
 21 task forces, not necessarily consisting of council members, and
 22 may use the committees or task forces, as well as existing
 23 agencies or organizations, to conduct studies, conduct surveys,
 24 submit recommendations or otherwise contribute expertise from
 25 the public schools, programs, interest groups and segments of

1 society most concerned with a particular aspect of the
2 council's work.

3 ~~[H.—The council]~~ G. Upon the recommendation of the
4 public school facilities authority, the council shall develop
5 building standards for public school facilities and shall
6 promulgate other such rules as are necessary to carry out the
7 provisions of the Public School Capital Outlay Act.

8 ~~[F.]~~ H. No later than December 15 of each year, the
9 council shall prepare a report summarizing its activities
10 during the previous fiscal year. The report shall describe in
11 detail all projects funded, the progress of projects previously
12 funded but not completed, the criteria used to prioritize and
13 fund projects and all other council actions. The report shall
14 be submitted to the ~~[state board]~~ public education commission,
15 the governor, the legislative finance committee, the
16 legislative education study committee and ~~[each member of]~~ the
17 legislature. "

18 Section 10. A new section of the Public School Capital
19 Outlay Act, Section 22-24-5.5 NMSA 1978, is enacted to read:

20 "22-24-5.5. [NEW MATERIAL] RECALCITRANT SCHOOL
21 DISTRICTS--COURT ACTION TO ENFORCE CONSTITUTIONAL COMPLIANCE--
22 IMPOSITION OF PROPERTY TAX.--

23 A. The council may bring an action against a school
24 district pursuant to the provisions of this section if, based
25 upon information submitted to the council by the public school

1 facilities authority, the council determines that:

2 (1) the physical condition of a public school
3 facility in the school district is so inadequate that the
4 facility or the education received by students attending the
5 facility is below the minimum required by the constitution of
6 New Mexico;

7 (2) the school district is not taking the
8 necessary steps to bring the facility up to the
9 constitutionally required minimum; and

10 (3) either:

11 (a) the school district has not applied
12 for the grant assistance necessary to bring the facility up to
13 minimum constitutional standards; or

14 (b) the school district is unwilling to
15 meet all of the requirements for the approval of an application
16 for grant assistance pursuant to Paragraph (9) of Subsection B
17 of Section 22-24-5 NMSA 1978.

18 B. An action brought pursuant to this section shall
19 be brought by the council in the name of the state against the
20 school district in the district court for Santa Fe county.

21 C. After a hearing and consideration of the
22 evidence, if the court finds that the council's determination
23 pursuant to Subsection A of this section was correct, the court
24 shall:

25 (1) order the council to expend sufficient

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1 resources necessary to bring the facility up to the minimum
2 level required by the constitution of New Mexico;

3 (2) order the school district to comply with
4 Paragraph (9) of Subsection B of Section 22-24-5 NMSA 1978 and
5 to take all other actions necessary to facilitate the
6 completion of the project ordered pursuant to Paragraph (1) of
7 this subsection; and

8 (3) enter a judgment against the school
9 district for court costs and attorney fees and the necessary
10 amount to satisfy the school district share, as determined by
11 the formula prescribed by Subsection B of Section 22-24-5 NMSA
12 1978, for the project ordered pursuant to Paragraph (1) of this
13 subsection.

14 D. The amount of a judgment entered against a
15 school district pursuant to Paragraph (3) of Subsection C of
16 this section is a public debt of the school district. If the
17 court finds that the debt cannot be satisfied with available
18 school district funds, other than funds needed for the
19 operation of the public schools and other existing obligations,
20 the court shall order the imposition of a property tax on all
21 taxable property allocated to the school district at a rate
22 sufficient to pay the judgment, with accrued interest, within a
23 reasonable time as determined by the court. After paying court
24 costs and attorney fees, amounts received pursuant to this
25 subsection shall be deposited by the council into the fund."

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1 Section 11. Section 22-24-6 NMSA 1978 (being Laws 1975,
2 Chapter 235, Section 6, as amended) is amended to read:

3 "22-24-6. COUNCIL CREATED-- ORGANIZATION-- DUTIES. --

4 A. There is created the "public school capital
5 outlay council", consisting of the:

6 (1) secretary of finance and administration or
7 ~~[his]~~ the secretary's designee;

8 (2) ~~[state superintendent or his]~~ secretary of
9 public education or the secretary's designee;

10 (3) ~~[the]~~ governor or ~~[his]~~ the governor's
11 designee;

12 (4) president of the New Mexico school boards
13 association or ~~[his]~~ the president's designee;

14 (5) ~~[the]~~ director of the construction
15 industries division of the regulation and licensing department
16 or ~~[his]~~ the director's designee;

17 (6) ~~[the]~~ president of the ~~[state board or~~
18 ~~his]~~ public education commission or the president's designee;

19 (7) ~~[the]~~ director of the legislative
20 education study committee or ~~[his]~~ the director's designee;

21 (8) ~~[the]~~ director of the legislative finance
22 committee or ~~[his]~~ the director's designee; ~~[and]~~

23 (9) ~~[the]~~ director of the legislative council
24 service or ~~[his]~~ the director's designee; and

25 (10) president of the New Mexico

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1 superintendents' association or the president's designee.

2 B. The council shall investigate all applications
3 for assistance from the fund and shall certify the approved
4 applications to the secretary of finance and administration for
5 distribution of funds.

6 C. The council shall elect a chairman from among
7 the members. The council shall meet at the call of the
8 chairman.

9 D. The [~~department of education~~] council shall
10 account for all distributions and shall make annual reports to
11 the public education commission, the governor, the legislative
12 education study committee, [and to] the legislative finance
13 committee and the legislature. "

14 Section 12. Section 22-24-9 NMSA 1978 (being Laws 2003,
15 Chapter 147, Section 1) is amended to read:

16 "22-24-9. PUBLIC SCHOOL FACILITIES AUTHORITY-- CREATION--
17 POWERS AND DUTIES. --

18 A. The "public school facilities authority" is
19 created under the [~~public school capital outlay~~] council. The
20 authority shall be headed by a director, selected by the
21 council, who shall be versed in construction, architecture or
22 project management. The director may hire no more than two
23 deputies with the approval of the council, and, subject to
24 budgetary constraints, shall employ or contract with such
25 technical and administrative personnel as are necessary to

1 carry out the provisions of this section. The director and
 2 deputies shall be exempt from the provisions of the Personnel
 3 Act; after July 1, [~~2004~~] 2005, all other employees of the
 4 authority shall be subject to the provisions of the Personnel
 5 Act.

6 B. The authority shall:

7 (1) serve as staff to the council;

8 (2) as directed by the council, provide those
 9 assistance and oversight functions required of the council by
 10 Section 22-24-5.1 NMSA 1978;

11 (3) assist school districts with:

12 (a) the development and implementation
 13 of five-year facilities plans and preventive maintenance plans;

14 (b) procurement of architectural and
 15 engineering services;

16 (c) management and oversight of
 17 construction activities; and

18 (d) training programs;

19 (4) conduct ongoing reviews of five-year
 20 facilities plans, preventive maintenance plans and performance
 21 pursuant to those plans;

22 (5) as directed by the council, assist school
 23 districts in analyzing and assessing their space utilization
 24 options;

25 [~~(5)~~] (6) ensure that public school capital

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underscored material = new
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1 outlay projects are in compliance with applicable building
2 codes;

3 ~~[(6)]~~ (7) conduct on-site inspections as
4 necessary to ensure that the construction specifications are
5 being met and periodically inspect all of the documents related
6 to projects;

7 ~~[(7) where appropriate]~~ (8) require the use
8 of standardized construction documents and the use of a
9 standardized process for change orders;

10 ~~[(8)]~~ (9) have access to the premises of a
11 project and any documentation relating to the project;

12 ~~[(9)]~~ (10) after consulting with the
13 department ~~[of education, develop]~~, recommend building
14 standards for public school facilities to the council and
15 ensure compliance with ~~[those]~~ building standards adopted by
16 the council;

17 ~~[(10)]~~ (11) maintain a database of the
18 condition of school facilities and maintenance schedules; and

19 ~~[(11)]~~ (12) ensure that outstanding
20 deficiencies are corrected pursuant to Section 22-24-4.1 NMSA
21 1978. In the performance of this duty, the authority:

22 (a) shall work with school districts to
23 validate the assessment of the outstanding deficiencies and the
24 projected costs to correct the deficiencies;

25 (b) shall work with school districts to

1 provide direct oversight of the management and construction of
2 the projects that will correct the outstanding deficiencies;

3 (c) shall oversee all aspects of the
4 contracts entered into by the council to correct the
5 outstanding deficiencies;

6 (d) may conduct on-site inspections
7 while the deficiencies correction work is being done to ensure
8 that the construction specifications are being met and may
9 periodically inspect all of the documents relating to the
10 projects;

11 (e) may require the use of standardized
12 construction documents and the use of a standardized process
13 for change orders;

14 (f) may access the premises of a project
15 and any documentation relating to the project; and

16 (g) shall maintain, track and account
17 for deficiency correction projects separately from other
18 capital outlay projects funded pursuant to the Public School
19 Capital Outlay Act.

20 C. All actions taken by the authority shall be
21 consistent with educational programs conducted pursuant to the
22 Public School Code. In the event of any potential or perceived
23 conflict between a proposed action of the authority and an
24 educational program, the authority shall consult with the
25 [~~state superintendent~~] secretary of public education.

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1 D. A school district, aggrieved by a decision or
2 recommendation of the authority, may appeal the matter to the
3 council by filing a notice of appeal with the council within
4 thirty days of the authority's decision or recommendation.

5 Upon filing of the notice:

6 (1) the decision or recommendation of the
7 authority shall be suspended until the matter is decided by the
8 council;

9 (2) the council shall hear the matter at its
10 next regularly scheduled hearing or at a special hearing called
11 by the chair for that purpose;

12 (3) at the hearing, the school district, the
13 authority and other interested parties may make informal
14 presentations to the council; and

15 (4) the council shall finally decide the
16 matter within ten days after the hearing. "

17 Section 13. Section 22-25-2 NMSA 1978 (being Laws 1975
18 (S.S.), Chapter 5, Section 2, as amended) is amended to read:

19 "22-25-2. DEFINITIONS.--As used in the Public School
20 Capital Improvements Act:

21 A. "program unit" means the product of the program
22 element multiplied by the applicable cost differential factor,
23 as defined in Section 22-8-2 NMSA 1978; and

24 B. "capital improvements" means expenditures,
25 including payments made with respect to lease-purchase

1 arrangements as defined in the Education Technology Equipment
 2 Act but excluding any other debt service expenses, for:

3 (1) erecting, remodeling, making additions to,
 4 providing equipment for or furnishing public school buildings;

5 (2) purchasing or improving public school
 6 grounds;

7 (3) maintenance of public school buildings or
 8 public school grounds, [~~exclusive of~~] including expenditures
 9 for technical training and certification for maintenance and
 10 facilities management personnel, but excluding salary expenses
 11 of school district employees;

12 (4) purchasing activity vehicles for
 13 transporting students to extracurricular school activities; and

14 (5) purchasing computer software and hardware
 15 for student use in public school classrooms."

16 Section 14. Section 22-25-7 NMSA 1978 (being Laws 1975
 17 (S.S.), Chapter 5, Section 7, as amended) is amended to read:

18 "22-25-7. IMPOSITION OF TAX--LIMITATION ON
 19 EXPENDITURES.--If as a result of an election held in accordance
 20 with the Public School Capital Improvements Act a majority of
 21 the qualified electors voting on the question vote in favor of
 22 the imposition of the tax, the tax rate shall be certified,
 23 unless the local school board requests by resolution that a
 24 rate be discontinued, by the department of finance and
 25 administration at the rate specified in the resolution

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1 authorized under Section 22-25-3 NMSA 1978 or at any lower rate
2 required by operation of the rate limitation provisions of
3 Section 7-37-7.1 NMSA 1978 upon the rate specified in the
4 resolution and be imposed at the rate certified in accordance
5 with the provisions of the Property Tax Code. The revenue
6 produced by the tax and, except as provided in Subsection F of
7 Section 22-25-9 NMSA 1978, any state distribution resulting to
8 the district under the Public School Capital Improvements Act
9 shall be expended only for the capital improvements specified
10 in the authorizing resolution. "

11 Section 15. Section 22-25-9 NMSA 1978 (being Laws 1975
12 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

13 "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING
14 TAX UNDER CERTAIN CIRCUMSTANCES. --

15 A. Except as provided in Subsection C of this
16 section, the [~~state superintendent~~] secretary of public
17 education shall distribute to any school district that has
18 imposed a tax under the Public School Capital Improvements Act
19 an amount from the public school capital improvements fund that
20 is equal to the amount by which the revenue estimated to be
21 received from the imposed tax, at the rate certified by the
22 department of finance and administration in accordance with
23 Section 22-25-7 NMSA 1978, assuming a one hundred percent
24 collection rate, is less than an amount calculated by
25 multiplying the school district's first forty days' total

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1 program units by the [~~dollar~~] amount specified in Subsection B
 2 of this section and further multiplying the product obtained by
 3 the tax rate approved by the qualified electors in the most
 4 recent election on the question of imposing a tax under the
 5 Public School Capital Improvements Act. The distribution shall
 6 be made each year that the tax is imposed in accordance with
 7 Section 22-25-7 NMSA 1978; provided that no state distribution
 8 from the public school capital improvements fund may be used
 9 for capital improvements to any administration building of a
 10 school district. In the event that sufficient funds are not
 11 available in the public school capital improvements fund to
 12 make the state distribution provided for in this section, the
 13 dollar per program unit figure shall be reduced as necessary.

14 B. In calculating the state distribution pursuant
 15 to Subsection A of this section, the following amounts shall be
 16 used:

17 (1) [~~fifty dollars (\$50.00)~~] the amount
 18 calculated pursuant to Subsection D of this subsection per
 19 program unit; and

20 (2) for fiscal year 2006 and thereafter, an
 21 additional amount certified to the [~~state superintendent~~]
 22 secretary of public education by the public school capital
 23 outlay council. No later than June 1, 2005 and each June 1
 24 thereafter, the council shall determine the amount needed in
 25 the next fiscal year for public school capital outlay projects

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1 pursuant to the Public School Capital Outlay Act and the amount
2 of revenue, from all sources, available for the projects. If,
3 in the sole discretion of the council, the amount available
4 exceeds the amount needed, the council may certify an
5 additional amount pursuant to this paragraph; provided that the
6 sum of the amount calculated pursuant to this paragraph plus
7 the amount in Paragraph (1) of this subsection shall not result
8 in a total statewide distribution that, in the opinion of the
9 council, exceeds one-half of the total revenue estimated to be
10 received from taxes imposed pursuant to the Public School
11 Capital Improvements Act.

12 C. For fiscal year 2004 and thereafter,
13 notwithstanding the amount calculated to be distributed
14 pursuant to Subsections A and B of this section, a school
15 district, the voters of which have approved a tax pursuant to
16 Section 22-25-3 NMSA 1978, shall not receive a distribution
17 less than ~~[an amount equal to five dollars (\$5.00)]~~ the amount
18 calculated pursuant to Subsection E of this section,
19 multiplied by the school district's first forty days' total
20 program units and further multiplying the product obtained by
21 the approved tax rate.

22 D. For purposes of calculating the distribution
23 pursuant to Subsection B of this section, the amount used in
24 Paragraph (1) of that subsection shall equal fifty dollars
25 (\$50.00) for fiscal year 2004, sixty dollars (\$60.00) for

1 fiscal year 2005 and in each subsequent fiscal year shall equal
 2 the amount for the previous fiscal year adjusted by the
 3 percentage increase between the next preceding calendar year
 4 and the preceding calendar year of the consumer price index for
 5 the United States, all items, as published by the United States
 6 department of labor.

7 E. For purposes of calculating the minimum
 8 distribution pursuant to Subsection C of this section, the
 9 amount used in that subsection shall equal five dollars (\$5.00)
 10 through fiscal year 2005 and in each subsequent fiscal year
 11 shall equal the amount for the previous fiscal year adjusted by
 12 the percentage increase between the next preceding calendar
 13 year and the preceding calendar year of the consumer price
 14 index for the United States, all items, as published by the
 15 United States department of labor.

16 F. In expending distributions made pursuant to this
 17 section, school districts shall give priority to maintenance
 18 projects.

19 ~~[D-]~~ G. In making distributions pursuant to this
 20 section, the [state superintendent] secretary of public
 21 education shall include such reporting requirements and
 22 conditions as are required by rule of the public school capital
 23 outlay council. The council shall adopt such requirements and
 24 conditions as are necessary to ensure that the distributions
 25 are expended in the most prudent manner possible and are

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1 consistent with the original purpose as specified in the
2 authorizing resolution. Copies of reports or other information
3 received by the [~~state superintendent~~] secretary in response to
4 the requirements and conditions shall be forwarded to the
5 council. "

6 Section 16. TEMPORARY PROVISION-- SHORT-TERM SUPPLEMENTAL
7 SEVERANCE TAX BONDS AUTHORIZED FOR FISCAL YEAR 2004.--

8 A. In addition to the bonds issued pursuant to
9 Section 7-27-14 NMSA 1978 and notwithstanding the limitations
10 of that section, in compliance with the Severance Tax Bonding
11 Act, in fiscal year 2004 the state board of finance may issue
12 and sell supplemental severance tax bonds with a term that does
13 not extend beyond the fiscal year in which they are issued in
14 an amount not exceeding fifty-seven million dollars
15 (\$57,000,000) when the public school capital outlay council
16 certifies by resolution the need for the issuance of the bonds.
17 The proceeds from the sale of the bonds are appropriated to the
18 public school capital outlay fund for the following purposes:

19 (1) completing projects that have been
20 partially funded by the public school capital outlay council in
21 September 2003 pursuant to the Public School Capital Outlay
22 Act; and

23 (2) making awards of grant assistance for
24 correcting deficiencies pursuant to the Public School Capital
25 Outlay Act.

1 B. No supplemental severance tax bonds shall be
 2 issued pursuant to this section unless the balance in the
 3 severance tax bonding fund as of the date that the bonds are
 4 issued is greater than the sum of:

- 5 (1) the debt service on the supplemental
- 6 severance tax bonds to be issued pursuant to this section;
- 7 (2) the debt service scheduled to be paid
- 8 during the remainder of the fiscal year on all outstanding
- 9 severance tax bonds and supplemental severance tax bonds; and
- 10 (3) the amount necessary to meet all principal
- 11 and interest payments on outstanding bonds payable from the
- 12 severance tax bonding fund on the next two ensuing semiannual
- 13 payment dates.

14 Section 17. TEMPORARY PROVISION--PUBLIC SCHOOL CAPITAL
 15 OUTLAY TASK FORCE--CREATION--STAFF.--

16 A. The "public school capital outlay task force" is
 17 created. The task force consists of twenty members as follows:

- 18 (1) the dean of the university of New Mexico
- 19 school of law or the dean's designee;
- 20 (2) the secretary of finance and
- 21 administration or the secretary's designee;
- 22 (3) the secretary of public education or the
- 23 secretary's designee;
- 24 (4) the state investment officer or the state
- 25 investment officer's designee;

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underscored material = new
 [bracketed material] = delete

1 (5) the chairmen of the house appropriations
2 and finance committee, the senate finance committee, the senate
3 education committee and the house education committee or their
4 designees;

5 (6) a minority party member of the house of
6 representatives, appointed by the New Mexico legislative
7 council;

8 (7) a minority party member of the senate,
9 appointed by the New Mexico legislative council;

10 (8) two public members who have expertise in
11 education and finance appointed by the speaker of the house of
12 representatives;

13 (9) two public members who have expertise in
14 education and finance appointed by the president pro tempore of
15 the senate;

16 (10) three public members who have expertise
17 in education and finance appointed by the governor; and

18 (11) three superintendents of school districts
19 or their designees that receive grants from the federal
20 government as assistance to areas affected by federal activity
21 authorized in accordance with Title 20 of the United States
22 Code, appointed by the New Mexico legislative council in
23 consultation with the governor.

24 B. The chair of the public school capital outlay
25 task force shall be elected by the task force. The task force

1 shall meet at the call of the chair.

2 C. Members of the task force shall serve from the
3 time of their appointment through June 30, 2005. On July 1,
4 2005, the task force is terminated.

5 D. The public members of the public school capital
6 outlay task force shall receive per diem and mileage pursuant
7 to the Per Diem and Mileage Act.

8 E. The legislative council service, with assistance
9 from the public school facilities authority, the department of
10 finance and administration, the public education department,
11 the legislative education study committee and the legislative
12 finance committee, shall provide staff for the public school
13 capital outlay task force.

14 Section 18. TEMPORARY PROVISION--PUBLIC SCHOOL CAPITAL
15 OUTLAY TASK FORCE--DUTIES.--The public school capital outlay
16 task force shall:

17 A. study and evaluate the progress and
18 effectiveness of programs administered pursuant to the Public
19 School Capital Outlay Act and the Public School Capital
20 Improvements Act;

21 B. review the condition index and the methodology
22 used for ranking projects;

23 C. evaluate the existing permanent revenue streams
24 as an adequate long-term funding source for public school
25 capital outlay projects;

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1 D. monitor and assist the public school capital
2 outlay council and the public school facilities authority as
3 they perform functions pursuant to the Public School Capital
4 Outlay Act, particularly as they implement the statewide-based
5 process for making grant awards; and

6 E. before the beginning of the first session of the
7 forty-seventh legislature, report the results of its analyses,
8 findings and recommendations to the governor and the
9 legislature.

10 Section 19. TEMPORARY PROVISION--REAUTHORIZATION.--In
11 addition to its original purpose, the balance of the
12 appropriation made from the general fund to the public school
13 capital outlay fund pursuant to Subsection D of Section 15 of
14 Chapter 338 of Laws 2001 may be used to carry out all of the
15 provisions of the Public School Capital Outlay Act, and the
16 period of time in which the appropriation may be expended is
17 extended through fiscal year 2007. Any unexpended or
18 unencumbered balance remaining at the end of fiscal year 2007
19 shall not revert but shall be used for the purpose of providing
20 grant assistance pursuant to the Public School Capital Outlay
21 Act.

22 Section 20. REPEAL.--Section 22-24-5.2 NMSA 1978 (being
23 Laws 2001, Chapter 328, Section 3) is repealed.

24 Section 21. EFFECTIVE DATE.--The effective date of the
25 provisions of Section 2 of this act is July 1, 2004.